

**1997-98 SESSION
COMMITTEE HEARING
RECORDS**

Committee Name:

*Joint Committee on
Finance (JC-Fi)*

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ 97hrJC-Fi_Misc_pt31

➤ Record of Comm. Proceedings ... RCP

➤ **

Administration

General Statutory Provisions

(LFB Budget Summary Document: Page 43)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	Payment of Stadium District Bills to DOA (Paper #138)
4	Transfer of Surplus Property to Tourism (see Paper #804)
8	State Energy Conservation Audits and Construction Projects (Paper #139)

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Payment of Stadium District Bills to DOA (Administration -- General Statutory Provisions)

[LFB Summary: Page 43, #1]

CURRENT LAW

As part of the Milwaukee Brewers Stadium legislation (1995 Wisconsin Act 56), the Department of Administration (DOA) was authorized to provide services to the Southeastern Wisconsin Professional Baseball Park District for compensation to be agreed upon between DOA and the District, if the District has entered into an agreement with DOA to lease land granted to the state, especially dedicated to use as a baseball stadium. DOA is authorized, upon the request of the District, to take charge of and supervise engineering or architectural services or construction work. In addition, DOA is allowed to furnish engineering, architectural, project management and other building construction services when requested by the District. DOA may also assist, upon request of the District, in letting contracts for engineering, architectural or construction work. Act 56 also authorized all state agencies to provide assistance to the District.

In addition to Act 56, a memorandum of understanding (MOU) related to the stadium was signed by representatives of the State of Wisconsin, Milwaukee County, City of Milwaukee and the Brewers. Although the MOU provides for certain activities to be conducted by or in consultation with DOA, the MOU does not contain any provision regarding compensation for such services.

GOVERNOR

The bill would specify that any District that directly benefits from services provided by DOA or the Building Commission would be liable for the fair market value of those services, as determined by the Secretary of DOA, including services provided before the effective date of the bill. The District would be liable regardless of whether it had been in existence at the time the services were provided or whether the District authorized the services. The bill would also specify that any actions taken by DOA and the Building Commission to provide such services before the effective date of the bill are validated.

The bill provision would require the Secretary of DOA to determine and certify to the Department of Revenue (DOR) any amount that a District would be liable for and remains unpaid. (DOR collects the sales tax on behalf of the District). The amount would be paid on the date specified in the certification from the revenues generated by the District's 0.1% sales tax. The Secretary's certification would apportion the unpaid liability between the DOA appropriation for capital planning and building construction services and the Building Commission's capital improvement fund based on the extent to which the expenditures were made from these appropriations. The certification could provide for a lump sum repayment or for installment payments.

DISCUSSION POINTS

1. The budget bill does not provide an estimate of the amount that would be collected under this provision. However, DOA has since indicated that the state's stadium-related expenses were approximately \$916,200. Since that time, the District has made a payment of \$158,200 to a consultant that was hired with expertise in stadium construction, which was charged against DOA's expenditures. In addition, a second payment of \$394,000 was made by the District to DOA for the reimbursement of stadium-related expenses. In total, the District has reimbursed DOA \$552,200 for state activities related to the stadium. District staff have indicated that the Board found that these payments were for activities that were authorized by the District.

2. The payments made by the District to date relate to expenditures that were made from DOA's capital planning and building construction services appropriation. This appropriation was amended in Act 56 to allow DOA to provide services to the District.

3. Of the \$916,200 in total stadium-related expenses, \$364,000 remains unpaid. The table below shows DOA's estimate of the state's outstanding expenses for the stadium project. The Department has indicated that no further detail regarding the expenses is available.

Financial advisory services: legal advice for drafting the MOU and review of Brewers' financial condition	\$305,300
Bond counsel: assistance in writing stadium legislation and legal assistance	29,900
Tax counsel services relating to stadium ownership and tax issues	25,900
Mailing expenses	2,000
Advertising for requests for proposal for District's revenue bond issue	<u>900</u>
Total Unreimbursed Expenses	\$364,000

4. The District's position is that it is not liable for the \$364,000 in outstanding expenses because these activities took place prior to the District's existence and without its authorization. In a letter sent to the Committee Co-Chairs, dated April 23, 1997, DOA indicated that it will consider the amounts paid by the District to date as payment in full and is willing to remove this provision from the budget bill.

5. It can be argued that, since DOA believes that it has been adequately reimbursed by the District for its previous expenses, the budget provision is no longer needed. On the other hand, if DOA has identified \$364,000 in expenses that have not yet been reimbursed, the recommendation of the Governor should remain in the bill and DOA should capture the unreimbursed expenses.

6. Alternatively, the Joint Committee on Audit could be directed to determine if all costs incurred by DOA that could appropriately be charged to the District have been reimbursed. The Governor's recommended language could be left in the bill and used, if necessary, to obtain any additional payment as certified by the Audit Committee.

ALTERNATIVES TO BILL

1. Adopt the Governor's recommendation to specify that any District that directly benefits from services provided by DOA or the Building Commission would be liable for the fair market value of those services and allow DOA to obtain payment for unpaid amounts from the District's 0.1% sales tax.

2. In addition to Alternative 1, direct the Joint Committee on Audit to certify any amount not yet paid to DOA that could appropriately be charged to the District and, upon certification, require DOA to utilize the provision to capture that amount.

3. Delete the Governor's recommendation.

Prepared by: Kelsie Doty

MO# Alt 3

2 BURKE	(Y)	N	A
DECKER	Y	(N)	A
GEORGE	Y	(N)	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
SHIBILSKI	(Y)	N	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A
1 JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

AYE 14 NO 2 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

State Energy Conservation Audits and Energy Conservation Construction Projects (Administration -- General Statutory Provisions)

[LFB Summary: Page 47, #8]

CURRENT LAW

State agencies may contract with qualified providers to perform energy conservation measures. Providers are required to guarantee a minimum amount of energy and operational cost savings. Conservation measures are repaid using cost savings. State construction projects that are estimated to cost more than \$30,000 must be publicly advertised and awarded to the lowest qualified responsible bidder. Projects that are estimated to cost more than \$100,000 are subject to Building Commission approval and those over \$250,000 must be specifically enumerated in the authorized state building program.

The Building Commission administers the Wisconsin Energy Initiative, an energy conservation program to reduce consumption and achieve optimum energy efficiency in state facilities. In 1995-97, \$10,000,000 in "all agency" general fund supported general obligation bonding was authorized to fund cost-effective energy conservation projects. Eligible projects must be beyond the capability of the agency to fund from its operating budget and pay back the state's investment in the project in a reasonable period of time (generally six years under Building Commission guidelines).

GOVERNOR/BUILDING COMMISSION

Allow DOA to contract with a qualified party for an energy conservation audit to be performed at any state-owned building, structure or facility. Specify that after a review of the

energy conservation audit report, and subject to any necessary approval by the Building Commission, DOA may contract for such energy conservation construction work to be performed, if, in the judgment of DOA, the anticipated savings to the state after completion of the work will enable recovery of the costs of the work within a reasonable period of time. Require that any construction work be financed by the contractor and repaid, with finance charges, from agency fuel and utility appropriations. Allow DOA to also charge its costs to negotiate and administer any contract to the agency fuel and utility appropriation. Exempt energy conservation projects from notice and bidding requirements for construction projects and from the requirement that such projects be enumerated in the authorized state building program.

On April 23, 1997, the Building Commission recommend the use of energy conservation audits/energy conservation construction projects provisions in lieu of increased general fund supported borrowing.

DISCUSSION POINTS

1. Under the bill the following provisions would be created related to energy conservation audits and construction projects:

- DOA would be allowed to contract with a qualified party for an energy conservation audit to be performed at any state-owned building, structure or facility. Under the contract, the contractor would be required to: (a) prepare a report containing a description of the physical modifications to the building, structure or facility that are required to achieve specific future energy savings within a specified period; and (b) determine the minimum savings in energy usage that would be realized by the state from making any modifications.

- After a review of the energy conservation audit report, DOA, subject to any necessary approval by the Building Commission, could contract for energy conservation construction work to be performed, if, in the judgment of DOA, the anticipated savings to the state after completion of the work will enable recovery of the costs of the work within a reasonable period of time.

- The contractor would be required to undertake the construction work at the contractor's own expense.

- The contract would provide for the state to pay a specific amount, including any financing costs incurred by the contractor, but not to exceed the minimum savings determined under the audit. Payments under the contract would be made as the savings in energy costs identified in the audit are actually realized by the state. Further, payments under the contract would be contingent upon available appropriations.

- DOA would be required to pay the construction costs from individual agency energy costs appropriations.

- DOA would be allowed to charge its costs for negotiation and administration of the construction contract to the agency energy cost appropriations.

- Energy conservation projects would be exempt from notice and bidding requirements for construction projects and from the requirement that such projects be enumerated in the authorized state building program.

2. The Attachment provides a comparison between current law energy savings performance contracting provisions and the energy conservation audit and construction projects program created in the bill. No projects have been implemented under the provisions in current law.

3. On April 23, 1997, the Building Commission recommended, on a 6 to 2 vote, that the energy conservation audit and construction project provisions of SB 77 be utilized in lieu of providing \$1,521,600 in general fund supported borrowing for four proposed energy conservation projects: (a) UW-Madison, Charter St. heating plant motor replacement (\$147,000); (b) UW-Madison, Walnut St. heating plant motor replacement (\$265,000); (c) Fox Lake Correctional Institution, vocational school building energy conservation (\$1,009,600); and (d) UW-La Crosse, Cowley Hall Vestibule (\$100,000). The Commission's recommendation also indicated that other miscellaneous energy conservation projects could be funded from residual energy or other all-agency funding sources or from agency operating budgets.

4. Using provisions in the bill, DOA could have a qualified contractor perform an energy audit on any state-owned building, structure or facility, at no cost to the state. It is DOA's intent that these audits would be performed on large complexes of building, such as a campus, not just on individual buildings. DOA indicates that it would then review the audit, and if it agreed with the audit results, could contract to have work performed. The Department intends that the company performing the audit would bid out portions of the entire project to other contractors and pay for the costs of the projects. The contractor would then be repaid for the costs of the project from agency fuel and utilities appropriations as savings accrued, in an amount not to exceed the minimum savings specified in the audit. The Department plans that state payments to the contractor would only last as long as the savings recovery period identified in the audit. If savings were less than estimated over the period, DOA intends that the state would not be required to pay for the remaining project costs at the end of the period. If savings were more than estimated, the state would only be required to pay the estimated minimum savings.

5. DOA argues that the provisions created in SB 77 would allow the Department to utilize the expertise of the Division of Facilities Development in planning, designing and evaluating proposed energy conservation projects and to also manage any project. Under the current law program, individual agencies may enter into energy savings performance contracts

without DOA oversight or approval of projects. Current law, does, however, require that projects over \$100,000 be approved by the Building Commission and any project over \$250,000 be enumerated in the state building program. The Department further argues that since fuel and utilities appropriations are the appropriations most likely to directly benefit from energy conservation projects, repayments of these projects from an agency's fuel and utilities appropriation is appropriate. Under the current program, any agency appropriation could be used for repayment.

6. At the April, 1997, Building Commission meeting, concerns were raised regarding the ability of small contractors to provide the financing for state projects necessary to participate in the program. DOA indicated that while larger firms would most likely be the providers of financing under the program, smaller companies could participate as subcontractors.

7. While DOA indicates that its intention is that the state not be responsible for any project costs occurring after the period specified in the audit, statutory language in the bill is unclear in this regard. The Committee could consider adding statutory language specifying that the state is only responsible for the repayment of project costs during the time period specified in the energy audit.

8. Under the bill, an agency's fuel and utilities appropriation would be charged for the costs of repayments as cost savings identified in the energy audit are realized. No reduction in an agency's appropriation would occur until a contractor is repaid for an energy savings construction project or after the time period specified in the energy audit. As a result, no actual savings to the state will occur until the project has been repaid or the time period expired. In order to ensure that actual cost reductions are made, the Committee could require that DOA annually, by January 1, report to the Joint Committee on Finance on any energy conservation projects financed under this provision, its estimated savings and repayment date. This alternative would give the Committee the ability to monitor actual savings and know when actual cost reductions could be made.

9. The bill allows DOA to undertake energy conservation audits and construction projects without the approval of an affected state agency, but charge the agency for the costs of the project and DOA's administration. The Committee could consider modifying the provision to specify that energy audits and construction projects could only be undertaken with the approval of the affected agency.

10. The Wisconsin Energy Initiative (WEI) program makes use of state general obligation bonding to fund energy conservation projects in new and existing state facilities. As a result, such projects are financed by lower cost tax exempt bonds. One of the concerns related to the Governor/Building Commission proposal is that the projects undertaken initially at private contract financing would not be eligible for federally tax exempt financing and therefore, could result in higher financing costs. However, to the extent that the projects would be paid off over

a shorter time period than that of the existing WEI projects, the difference in financing costs between the two programs could be reduced.

11. If the Committee does not create the energy conservation audits and construction projects provisions, it could be argued that the four projects that were not funded by the Building Commission in lieu of funding the projects under provision of the bill, should be funded. Under this alternative, \$1,521,600 in general fund supported borrowing could be provided, the projects enumerated as all agency projects--Wisconsin energy initiative and a corresponding increase made to the Building Commission's general fund supported, other public purposes bonding authorization.

12. If the energy conservation audits and construction projects provisions are not adopted and additional funding is not provided, funding for the projects recommended by the Commission to be funded under energy performance contracting would have to come from the \$105 million in all agency bonding authority recommended under the amendment. However, funding the projects from the funding provided for all agency projects would require the Building Commission and DOA to reprioritize the all agency projects recommended for funding.

13. The question could be raised as to the necessity of having two separate energy performance contracting programs in the statutes. If the Committee agrees that DOA should administer such a program, rather than allowing state agencies, individually, to contract with providers, it could repeal the current law program in order to eliminate the presence of two programs with similar goals, but dissimilar approaches.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to allow DOA to contract with a qualified party for an energy conservation audit to be performed at any state-owned building, structure or facility. Specify that after a review of the energy conservation audit report, and subject to any necessary approval by the Building Commission, DOA may contract for such energy conservation construction work to be performed, if, in the judgment of DOA, the anticipated savings to the state after completion of the work will enable recovery of the costs of the work within a reasonable period of time. Require that any construction work be financed by the contractor and repaid, with finance charges, from agency fuel and utility appropriations. Allow DOA to charge its costs to negotiate and administer any contract to the agency fuel and utility appropriation. Exempt energy conservation projects from notice and bidding requirements for construction projects and from the requirement that such projects be enumerated in the authorized state building program.

2. Modify the Governor's recommendation by adopting one or more of the following changes:

a. Specify that the state is only responsible for the repayment of project costs during the period specified in the required energy conservation audit;

b. Require DOA to annually, by January 1, report to the Joint Committee on Finance regarding any energy conservation project financed under the energy conservation audit and construction projects provision, its estimated annual savings and the final project repayment date.

c. Specify that energy audits and construction projects may only be undertaken with the approval of the affected agency.

d. Repeal the current energy savings performance contracting provisions.

3. Maintain current law.

4. In addition to alternative 3, provide \$1,521,600 in general fund supported borrowing for energy conservation projects, enumerate the projects as all agency projects-- Wisconsin energy initiative and increase the Building Commission's all agency, other public purposes bonding authorization by a corresponding amount.

Alternative 4	BR
1997-99 FUNDING (Change to Bill)	\$1,521,600

Prepared by: Jere Bauer

MO# Alt 2 a, b, d

2 BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS 0

ATTACHMENT

Energy Conservation Contracting Current Law Program and Senate Bill 77 Provisions

	Current Law Energy Savings <u>Performance Contracting</u>	Senate Bill 77 Energy Conservation Audit <u>and Construction Projects</u>
Administering Agency	Any state agency	DOA
Definition of a "Qualified Provider"	Person who is experienced in the design, implementation and installation of energy conservation and facility improvement measures.	None
Energy Savings Report	Prepared prior to entering into an energy savings performance contract.	Must enter into a contract to perform energy audit.
Report Contents	Cost estimate of installation, modifications or remodeling and a guarantee of a minimum amount that energy or operating costs will be reduced.	Description of the work to be performed to realize specific energy savings and an identification of the minimum amount that would be saved by the state.
Project Requirements	<ol style="list-style-type: none"> 1. Costs in excess of \$30,000 must be publicly advertised and awarded to the lowest bidder. 2. Projects estimated to cost more than \$250,000 must be specifically enumerated by the Legislature. 	<ol style="list-style-type: none"> 1. Energy conservation projects exempted from current law. 2. Energy conservation projects exempted from current law.
Project Approval	For projects over \$100,000, Building Commission.	Same
Requirements to Enter into a Contract	Agency reviews energy savings report and finds that the energy savings measures recommended are not likely to exceed the amount saved in energy and operational costs over the remaining useful life of the facility.	DOA reviews report and determines that the anticipated savings to the state after completion of the project will enable the recovery of the costs of the work to be made within a reasonable amount of time.
Payment for Projects	Agency payments (in installments or through a lease-purchase agreement) shall be made as savings are achieved, with a minimum level of savings guaranteed by the provider. Payment may be made from any operating or capital appropriation.	Agency payments not to exceed the minimum amount of determined savings, as savings are realized. Payments are made from the appropriate fuel and utilities appropriation.
DOA Administrative Costs	None.	DOA may charge for its costs of negotiating contracts and administering the contracts. Costs

Current Law
Energy Savings
Performance Contracting

Senate Bill 77
Energy Conservation Audit
and Construction Projects

are recovered from the appropriate
fuel and utilities appropriation.

Performance Bonds

Each qualified provider is required to provide labor and material payment and performance bonds in an amount equal to the maximum amount of any payment under the contract.

None.

Monitoring Reports

During the term of the contract a provider is required to monitor the reductions in energy consumption and costs savings attributable to the energy savings project, and report these findings to the agency.

None.

Definition of Energy Conservation Measures

1. Insulation of a building structure or systems within a building.
2. Modifications to window and door systems.
3. Automated or computerized energy control and facility management systems or computerized maintenance management systems.
4. Heating, ventilating or air conditioning system modifications or replacements.
5. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system.
6. Energy recovery systems.
7. Utility management systems and services.
8. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.
9. Lifesafety systems.
10. Any other facility improvement measure that is designed to provide long-term energy or operating cost reductions or compliance with state or local building codes.

None.

ADMINISTRATION
General Statutory Provisions

LFB Summary Items for Introduction as Separate Legislation

Item #	Title
2	Temporary Staffing Authority
3	DOA Approval of Settlement Agreements Made by the Attorney General
5	Personally Identifiable Information in State Records
6	Public Records Board Membership
7	Agency Records Management Reports
9	Reporting Requirements -- Energy and Recycling
10	Optical Disk and Electronic Records Storage Administrative Rules

